

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION**

**JUSTIN LAMAR JOHNSON,**

**Plaintiff,**

**v.**

**JUDGE JOSEPH GIBSON,**

**Defendant.**

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**CASE NO. 1:18 CV 1152**

**JUDGE CHRISTOPHER A. BOYKO**

**OPINION AND ORDER**

**CHRISTOPHER A. BOYKO, J.:**

*Pro se* Plaintiff Justin Lamar Gibson filed this action under 42 U.S.C. § 1983 against retired Judge Joseph Gibson. In the Complaint, Plaintiff alleges Judge Gibson deprived him of his right to a jury trial by conducting a bench trial. He asserts this deprived him of due process. He seeks monetary damages and an injunction to stop the State of Ohio from convicting citizens without due process.

**LAW AND ANALYSIS**

Although *pro se* pleadings are liberally construed, *Boag v. MacDougall*, 454 U.S. 364, 365 (1982) (per curiam); *Haines v. Kerner*, 404 U.S. 519, 520 (1972), the Court is required to dismiss an *in forma pauperis* action under 28 U.S.C. §1915(e) if it fails to state a claim upon which relief can be granted, or if it lacks an arguable basis in law or fact. *Neitzke v. Williams*, 490 U.S. 319 (1989); *Lawler v. Marshall*, 898 F.2d 1196 (6th Cir. 1990); *Sistrunk v. City of*

*Strongsville*, 99 F.3d 194, 197 (6th Cir. 1996). An action has no arguable basis in law when the Defendant is immune from suit or when the Plaintiff claims a violation of a legal interest which clearly does not exist. *Neitzke*, 490 U.S. at 327. An action has no arguable factual basis when the allegations are delusional or rise to the level of the irrational or “wholly incredible.” *Denton v. Hernandez*, 504 U.S. 25, 32 (1992); *Lawler*, 898 F.2d at 1199.

A cause of action fails to state a claim upon which relief may be granted when it lacks “plausibility in the Complaint.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 564 (2007). A pleading must contain a “short and plain statement of the claim showing that the pleader is entitled to relief.” *Ashcroft v. Iqbal*, 556 U.S. 662, 677-78 (2009). The factual allegations in the pleading must be sufficient to raise the right to relief above the speculative level on the assumption that all the allegations in the Complaint are true. *Bell Atl. Corp.*, 550 U.S. at 555. The Plaintiff is not required to include detailed factual allegations, but must provide more than “an unadorned, the-Defendant-unlawfully-harmed-me accusation.” *Iqbal*, 556 U.S. at 678. A pleading that offers legal conclusions or a simple recitation of the elements of a cause of action will not meet this pleading standard. *Id.* In reviewing a Complaint, the Court must construe the pleading in the light most favorable to the Plaintiff. *Bibbo v. Dean Witter Reynolds, Inc.*, 151 F.3d 559, 561 (6th Cir. 1998).

Judges are absolutely immune from civil suits for money damages. *Mireles v. Waco*, 502 U.S. 9, 9 (1991); *Barnes v. Winchell*, 105 F.3d 1111, 1115 (6th Cir. 1997). They are accorded this broad protection to ensure that the independent and impartial exercise of their judgment in a case is not impaired by the exposure to damages by dissatisfied litigants. *Barnes*, 105 F.3d at 1115. For this reason, absolute immunity is overcome only in two situations: (1) when the

conduct alleged is performed at a time when the Defendant is not acting as a judge; or (2) when the conduct alleged, although judicial in nature, is taken in complete absence of all subject matter jurisdiction of the court over which he or she presides. *Mireles*, 502 U.S. at 11-12; *Barnes*, 105 F.3d at 1116. *Stump*, 435 U.S. at 356-57. A judge will be not deprived of immunity even if the action he or she took was performed in error, done maliciously, or was in excess of his or her authority. *Mireles*, 502 U.S. at 11-12.

Plaintiff provides very little information about the case over which Judge Gibson presided. He states only that the Judge waived his right to a jury trial and proceeded with a bench trial. This is an action that is judicial in nature and Plaintiff does not allege facts to suggest the matter over which Judge Gibson presided was outside of the subject matter jurisdiction of the court. As none of the exceptions apply, Judge Gibson is absolutely immune from suits for damages.

Furthermore, it appears that the case to which Plaintiff objects was a criminal case because Plaintiff asserts he was wrongfully imprisoned. If Plaintiff were convicted of the charges against him, he cannot bring a civil rights case to assert claims that challenge his conviction. In order to recover damages for allegedly unconstitutional conviction, imprisonment, or sentence, a § 1983 Plaintiff must demonstrate that the conviction or sentence was reversed on direct appeal, expunged by executive order, declared invalid by a state tribunal authorized to make such determination, or called into question by a Federal Court's issuance of a writ of habeas corpus, 28 U.S.C. § 2254. *Heck v. Humphrey*, 512 U.S. 477, 486 (1994). A claim for damages bearing that relationship to a conviction or sentence that has not been invalidated is not cognizable under § 1983. Therefore, when a state prisoner seeks damages in a

§ 1983 suit, the Court must consider whether a judgment in favor of the Plaintiff would necessarily imply the invalidity of his conviction or sentence. If it would, the Complaint must be dismissed unless the Plaintiff can demonstrate that the conviction or sentence has already been invalidated. Plaintiff's claim in this case, that he was denied due process when he was denied a jury trial would, if found to have merit, imply the invalidity of his conviction. He has not alleged that he was acquitted of the charges or that his conviction was reversed. He cannot proceed with this claim in a civil rights action.

### **III. CONCLUSION**

Accordingly, Plaintiff's Motion to Proceed *In Forma Pauperis* (ECF No. 2) is granted and this action is dismissed pursuant to 28 U.S.C. §1915(e). The Court certifies, pursuant to 28 U.S.C. § 1915(a)(3), that an appeal from this decision could not be taken in good faith.<sup>1</sup>

IT IS SO ORDERED.

s/ Christopher A. Boyko  
CHRISTOPHER A. BOYKO  
UNITED STATES DISTRICT JUDGE

DATED: August 13, 2018

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<sup>1</sup> 28 U.S.C. § 1915(a)(3) provides:

An appeal may not be taken *in forma pauperis* if the trial court certifies that it is not taken in good faith.